

REMARKS

In the Final Rejection dated January 22, 2008, the format of claim 13 was objected to, claims 1-6, 9, 13-19, and 60-61 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite, and claims 1-6, 9, 13-19, and 60-61 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Upon entry of this Amendment, claims 1, 2, 4, 6, 60 and 61 will have been amended, claims 62-69 will have been added, and claims 3, 5, 7, 8 and 10-59 will have been cancelled, leaving claims 1, 2, 4, 6, 9, and 60-69 pending in this application.

Response to Objection of Claim 13:

Claim 13 was objected to under 37 C.F.R. § 1.75(i) as failing to provide indentation for each element. Although Applicants traverse this objection, claim 13 has been canceled, rendering the objection moot.

Response to Claim Rejections Under 35 U.S.C. § 112 and 35 U.S.C. § 101:

It is noted initially that claim 1 recited that the second portion of the two-piece dispenser was “defined at least partially along its perimeter by the first tear line, the second tear line, and the third tear line”. However, as disclosed, the second portion 28a of the dispenser is defined at least partially by tear line 25 and by first and second cuts 42. Claim 1 has therefore been amended to delete any reference to second and third tear lines, and to recite that the second portion is “defined at least partially along its perimeter by the first tear line, a first provision, and a second provision”. Support for the term “provision” is found at page 5, lines 20-22 of the specification. where it is disclosed that “This outward flexing of the upper part 28a is made possible by the provision of the cuts 42 in the folds 40, 41 and makes it easier to remove the cans from the carton.” (emphasis added)

Claims 1-6, 9, and 60 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner cited MPEP § 2173.05(p) and stated: "Claim 1 and its dependent claims 2-6, 9, and 60 recite the apparatus including "a carton comprising: ... a two-piece dispenser" and the method comprising the step of "after the first portion is detached". Since claim 1 and its dependent claims 2-6, 9, and 60 claim both an apparatus and the method steps of using the apparatus, these claims are indefinite." Claims 1-6, 9, and 60 were also rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner stating: "In particular, claim 1 is directed to neither a "process" nor a "machine", but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See, MPEP, section 2173.05(p). In particular, claims 1-6, 9, and 60 recite both a process and a machine." Applicants traverse these rejections and aver that the claims as presented were definite as written. However, to expedite prosecution, claim 1 has been amended to recite, inter alia:

a two-piece dispenser that includes a first portion and a second portion; the first portion defined at least partially along its perimeter by a first tear line; the first portion extending at least partially into the first side, the second side, and the third side; the first portion being removable from the carton along the first tear line to create a first opening for article removal, the second portion being adjacent the first portion and being defined at least partially along its perimeter by the first tear line, a first provision, and a second provision; the first provision having a first end proximate the first portion and a second end distal the first portion, the second end of the first provision being intersected by a first intersection line that prevents the first provision from extending beyond its intended length, the second provision having a first end proximate the first portion and a second end distal the first portion; the second end of the second provision being intersected by a second intersection line that prevents the second provision from extending beyond its intended length; the second portion being separable along the first provision and the second provision to create a second opening in the carton;

As amended, the language "after the first portion is detached" has been removed, and the first and second portions of the dispenser have been defined by a tear line and provisions, among

other elements. Thus, claim 1 is allowable as defining over the cited art and, since claims 2-6, 9, and 60 inherit the allowable characteristics thereof, Applicants request that the rejections of claims 1-6, 9, and 60 under 35 U.S.C. § 112 and 35 U.S.C. § 101 be withdrawn.

Claims 13-19 and 61 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner cited MPEP § 2173.05(p) and stated: "Claim 13 and its dependent claims 14-19 and 61 recite the apparatus including "a blank comprising: ... a two-piece dispenser" and the method comprising the step of "after the first portion is detached". Since claim 13 and its dependent claims 14-19 and 61 claim both an apparatus and the method steps of using the apparatus, these claims are indefinite." Claims 13-19 and 61 were also rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner stating: "In particular, claim 1 [Applicants presume the Examiner intended to state "13"] is directed to neither a "process" nor a "machine", but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See, MPEP, section 2173.05(p). In particular, claims 13-19 and 61 recite both a process and a machine." Applicants traverse these rejections and aver that the claims as presented were definite as written. However, upon entry of this Amendment, claims 13-19 will have been canceled in favor of new blank claims 67-69 and claim 61 has been amended to depend from new claim 64. Applicants therefore submit that the rejections under 35 U.S.C. § 112 and 101 of claims 13-19 are rendered moot and request that the rejection of claim 61 under 35 U.S.C. § 112 and 35 U.S.C. § 101 be withdrawn.

New claims 62-69 have been added by this Amendment. Independent claim 62 recites a package that defines over the cited art, and independent claim 67 is drawn to a blank that likewise defines over the cited art.

The dependent claims are allowable over the cited art on their own merits and as inheriting the allowable characteristics of the independent claims from which they depend.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted,



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